



# **2008 Legislative Summaries**

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**State of Arizona  
Department  
of Revenue**

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**This document contains summaries of 2008 legislation from the  
Forty-eighth Legislature – Second Regular Session.**

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# 2008 Legislative Summaries

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The following is intended to give a brief summary of the 2008 tax-related legislation impacting the Department of Revenue (DOR) and not intended to discuss the details of any specific enactment. Detailed summaries of these bills can also be found at [www.azleg.gov](http://www.azleg.gov). Please refer to the particular legislation for more definitive information.

The general effective date for legislation is September 26, 2008. All legislation will have this effective date unless otherwise noted in the summary.

To go to the complete bill, click on the chapter number (hyperlink to Internet).

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## Income Tax

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### House Bill 2103 (Chapter [60](#))

2008 tax corrections act

See summary under Multiple Tax Types.

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### House Bill 2104 (Chapter [94](#))

Internal revenue code conformity

- HB2104 updates Arizona's definition of internal revenue code to include all Internal Revenue Code provisions that were in effect as of January 1, 2008.
- Tax year 2007 includes all Internal Revenue Code provisions passed with retroactive federal effective dates between December 31, 2006 and December 31, 2007 which includes the Small Business and Work Opportunity Tax Act of 2007, the Energy Independence and Security Act of 2007, Prevent Taxation of payment to Virginia Tech Victims and Families of 2007, Mortgage Forgiveness Debt Relief Act of 2007 and the Tax Technical Corrections Act of 2007.

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### House Bill 2107 (Chapter [204](#))

Delinquent information tax returns; penalty

HB 2107 amends the penalty for filing a late or incomplete informational return from a one time five hundred dollar penalty to a graduated penalty of one hundred dollars per month.

Provisions:

- Provides that an information return that is incomplete or filed after its due date (including extensions) is subject to a penalty of \$100 for each month, or fraction of a month, that the failure continues, up to a maximum penalty of \$500.
- If the failure is due to reasonable cause and not willful neglect, the penalty can be abated.

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### House Bill 2589 (Chapter [220](#))

Income tax credit; other states

HB2589 amends the Arizona resident credit for taxes paid to another state or country to define the terms "entire income on which the other state's or country's tax is imposed", "entire income on which the tax is imposed by this chapter", "income subject to tax in the other state or country and also taxable under this title", and "tax payable under this chapter". These are the terms used in the numerator and the denominator of the formula residents use for computing the credit.

The bill also amends the nonresident credit for taxes paid to another state or country to define the terms "entire income on which the taxes paid to the state or country of residence are imposed", "entire income taxable under this title", "income taxable under this title and also subject to tax in the state or country of residence" and "tax payable under this title". These are the terms used in the numerator

and the denominator of the formula nonresidents use for computing the credit.

These terms are being defined to clarify what amounts a taxpayer must use for the denominator and the numerator when computing a tax credit under the statutory formula. The definitions from this bill are similar to the definitions in the rule that was in effect prior to the Arizona Court of Appeals overruling those definitions. This will allow taxpayers to compute the credit in the same manner as they did prior to the Arizona Court of Appeals decision in *Sterns v. Arizona Department of Revenue*, 212 Ariz. 333,131 P.3d 1063 (App. 2006).

This legislation applies retroactively to taxable years beginning from and after December 31, 2007.

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## Transaction Privilege Tax/ Use Tax

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### House Bill 2106 (Chapter [21](#))

Sales tax; electronic payment delinquency

HB2106 amends the transaction privilege tax statutes to provide an alternative delinquency date for persons filing and paying their tax electronically on or before the last business day of the month.

The return or payment for taxpayers electing to file and pay electronically in any month, will be delinquent if not received by the department on or before the last business day of the month.

This bill is effective on January 1, 2009.

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### House Bill 2356 (Chapter [303](#))

Prime contracting TPT; deduction

HB 2356 amends the transaction privilege tax statutes to clarify the deduction allowed under the prime contracting classification for development fees paid to the state, county or a municipality.

The legislation provides an effective date retroactively to September 1, 2006.

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### House Bill 2622 (Chapter [255](#))

Exemption; preconstruction services

HB2622 exempts transaction privilege tax for design phase services and professional services related to prime contracting.

Provisions:

- Adds gross proceeds of sales or gross income attributable to design phase services and professional services that are provided pursuant to a separate contract requiring those design services or professional services to the list of items exempt from TPT.
- Defines “design phase services”, “construction phase services” and “professional services”.
- Stipulates that a taxpayer may not claim a refund of TPT based on the retroactivity of this act.
- Specifies that a separate and written design phase services contract or professional services contract that is executed before modification begins is not subject to tax regardless of the timing of the services.
- Clarifies that the tax base does include the gross proceeds of sales or gross income attributable to construction phase services.
- Defines “construction phase services” as services for the execution and completion of any modification, including:
  - administration or supervision of any modification performed on the project including team management and coordination; scheduling; cost controls; submittal process management; field management; safety program; close-out process; and warranty period services.
  - administration or supervision of any modification performed pursuant to a punch list, change orders or change directives.
  - inspection to determine the dates of substantial completion or final completion.

- preparation of manuals, warranties, as-built drawings, spares or other items the prime contractor must furnish pursuant to the contract for modification work.
  - preparation of status reports after modification work has begun detailing the progress of work performed.
  - preparation of daily logs of modification work that can include documentation of personnel, weather conditions and on-site occurrences.
  - preparation of any submittals or shop drawings used by the prime contractor to illustrate details of the modification work performed.
  - administration or supervision of any other activities for which a prime contractor receives a certificate for payment or certificate for final payment based on the progress of modification work performed on the project.
- Defines “design phase services” as services for developing and completing a design for a project that are not construction phase services that can include:
    - evaluating surveys, reports, test results or any other information for on-site conditions for the project, including physical characteristics, legal limitations and utility locations for the site.
    - evaluating any criteria or programming objectives for the project to ascertain requirements for the project.
    - preparing drawings and specifications for architectural program documents, schematic design documents, design development documents, modification work documents or documents that identify the scope of or materials for the project.
    - preparing an initial schedule for the project but excluding the preparation of updates to the master schedule after modification work has begun.
    - preparing preliminary estimates of costs of modification work before completion of the final design of the project.
    - reviewing and evaluating cost estimates and project documents to prepare

recommendations on site use; site improvements; selection of materials, building systems and equipment; modification feasibility; availability of materials and labor; local modification activity as related to schedules and time requirements for modification work.

- preparing the plan and procedures for selection of subcontractors, including any prequalification of subcontractor candidates.
- Defines “professional services” as architect, assayer, engineer, geologist, land surveying or landscape architect services.
- Makes technical and conforming changes

This legislation becomes effective on the general effective date, retroactive to January 1, 2001.

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## **House Bill 2732 (Chapter [246](#))**

Vehicles; nonresident purchasers; tax liability

HB2732 addresses retail sales of motor vehicles to nonresidents of Arizona, and establishes new documentation requirements for the four state transaction privilege tax exemptions and the one city privilege tax exemption that mirrors a state exemption, that may apply to these sales. The Department of Revenue is required to prescribe forms for certificates that will document the necessary criteria for these state and city tax exemptions.

HB 2732 also contains a retroactive provision regarding the documentation that will satisfy the statutory exemptions for sales of motor vehicles to nonresidents, for sales made prior to the effective date of this bill. These separate documentation requirements apply to sales that were made between August 25, 2004 and September 26, 2008.

If a nonresident who has purchased a motor vehicle exempt from tax under one of the statutory provisions registers the motor vehicle in Arizona within one year, that purchaser will now be liable for an amount that is equal to the state, county, *and city* taxes that would have applied to the original sale, plus penalties and interest.

HB 2732 also amends A.R.S. § 28-2001, which provides a definition of “resident” for the purpose of the operation and registration of motor vehicles, to include “a person who is registered to vote in this state.” The bill also amends A.R.S. § 28-2055, which addresses the certificate of title for a motor vehicle, to add a “transfer on death provision” that will allow the owner of a vehicle to designate a beneficiary of the title in the event of the owner’s death.

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### **Senate Bill 1340 (Chapter [194](#))**

Tax exemption; internet applications

SB1340 provides deductions under the retail, personal property rental and telecommunications classifications of the transaction privilege tax and an exemption under the use tax for application services that are designed to assess or test student learning or to promote curriculum design or enhancement sold to or purchased by or for any school district, charter school, community college or state university.

This bill becomes effective on the general effective date retroactive for taxable years beginning on January 1, 2000.

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### **Senate Bill 1450 (Chapter [297](#))**

Regional attraction districts

See summary under Multiple Tax Types.

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## **Property Tax**

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### **House Bill 2130 (Chapter [49](#))**

Residential property tax; homesite area

HB2130 allows up to 10 acres on a single parcel to be classified as legal class 3 property if all other existing requirements are met. Additionally, more than 10, but not more than 40 acres may be classified as class three if it is zoned exclusively for residential purposes, or contains legal restrictions or physical conditions that prevent the division of the parcel. “Physical conditions” is defined as topography, mountains, washes, rivers, roads or any

other configuration that limits the residential usable land area.

This bill becomes effective from and after December 31, 2008.

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### **House Bill 2191 (Chapter [178](#))**

Property classification; bed and breakfast

HB2191 increases the allowable number of rooms a bed and breakfast may operate from four to six and still qualify for a class 4 assessment ratio.

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### **House Bill 2330 (Chapter [252](#))**

Property tax exemption; charter schools

HB2330 clarifies the charter school exemption and related procedures by adding subsections stating that:

- Property and buildings owned by a non-profit 501(c)(3) and operated as a charter school are exempt from taxation beginning on the date that the property was first owned by the 501(c)(3) and operated as a charter school.
- Within ten days of receiving an affidavit of eligibility from a nonprofit organization described above, the assessor must issue a receipt for the affidavit.
- The exemption will remain in place until the property is no longer used by a charter school or owned by the 501(c)(3).
- If the property is sold by one 501(c)(3) to another, the new owner must re-establish eligibility.
- If the 501(c)(3) owner of the property fails to timely file the affidavit required to establish the exemption, but otherwise qualifies, the county board of supervisors must direct the county treasurer to:
  - Refund any taxes paid by the organization within 30 days if the taxpayer submits a

claim within one year after the date the taxes were paid.

- Forgive any property taxes and accrued interest and penalties that are due but not paid.

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### **House Bill 2351 (Chapter [65](#))**

Property tax lien interest calculation

HB2351 establishes that interest on the purchase of delinquent tax liens begins to accrue on the first day of the month following the purchase of the tax lien.

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### **House Bill 2420 (Chapter [107](#))**

Flood control districts; property

HB2420 allows flood control districts to sell land to the state or a county after obtaining an appraisal without having a public auction.

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### **House Bill 2523 (Chapter [174](#))**

Tax lien sale; regulation

HB2523 allows the treasurer to sell tax deeds of property that has been foreclosed due to non-payment of delinquent taxes to adjacent property owners if the property meets certain qualifications.

The bill became effective May 6, 2008, immediately upon the Governor's signature.

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### **House Bill 2614 (Chapter [306](#))**

Renewable energy valuation; expiration extension

HB2614 states that renewable energy systems and any other device or system designed primarily for the production of renewable energy of which the majority will be used on-site are considered to add no value to the property if the property is a class three or class four property. This means that grid connected photovoltaic (PV) systems installed on residential property may not be included in the value of the property. "Renewable energy systems" is defined as electric generation systems and electrical transmission and distribution that is used or useful for the generation, storage, transmission or

distribution of electric power, energy or fuel derived from solar, wind or other non-petroleum renewable sources, including materials and supplies.

The bill also extends the sunset date for the 20% valuation factor for renewable energy equipment (centrally valued) from 2011 until 2040.

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### **Senate Bill 1189 (Chapter [83](#))**

Private historic cemeteries; historic preservation

SB1189 exempts historic private burial sites and historic private cemeteries from taxation. The owner of the historic private burial site or historic private cemetery must establish qualification for the exemption in the same manner as all other cemetery property. No further filing is required until any part of the property is either used for a different purpose, rezoned, or sold.

In the 2000 General election, voters approved Proposition 105 which permits the legislature to exempt cemetery property. The legislature previously enacted ARS §42-11110 which exempted cemetery property as defined in ARS § 32-2101. While this exempted the majority of cemetery property in Arizona, some historic private burial sites were not covered by this exemption.

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### **Senate Bill 1450 (Chapter [297](#))**

Regional attraction districts

See summary under Multiple Tax Types.

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## **Multiple Tax Types**

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### **House Bill 2103 (Chapter [60](#))**

2008 tax corrections act

HB2103 makes technical, conforming and clarifying changes to Arizona tax statutes.

Provisions:

- Clarifies the requirement of domestic micro-breweries that sell or deliver beer to pay all luxury and transaction privilege taxes.

- Reinstates definitions used in the calculation of additional state aid to education that were incorrectly referenced after the passage of the property valuation protection for senior property owners.
- Removes obsolete references to “unsecured” personal property.
- Clarifies statutes relating to the failure to affix proper luxury tax stamps on cigarettes also apply to other tobacco products.
- Corrects references to the Code of Federal Regulations, the U.S. Code and a federal farm program.
- Creates a use tax exemption for the purchase of solar energy devices bought from a retailer that is registered with DOR as a solar energy retailer or a solar energy contractor.
- Defines “solar daylighting” and “solar energy” devices.
- Specifies that Indian-owned, low-income housing properties that are exempt from property tax are exempt from filing an annual affidavit.
- Clarifies that accelerated depreciation for personal property applies to class 2 properties.
- Adds, retroactive to property tax years beginning from and after December 31, 2006, a cross-reference for the clarification of the classification of property used for the manufacture of bio-diesel fuel.
- Creates a cross reference to clarify grants for displaced students are an income tax subtraction.
- Corrects internal references and revised definitions associated with motion picture tax credits.
- Eliminates the provision for DOR to report on the fiscal impact of alternative fuel income tax credits.
- Specifies that values used to determine net contributions shall not be included in the publication of net assessed values.
- Specifies, retroactive to tax years beginning from and after December 31, 2006, that only a residential graywater system that is a water conservation system must comply with rules set forth by the Arizona Department of Environmental Quality.
- Makes other technical and conforming changes.

This bill becomes effective on the general effective date, with a retroactive provision as noted.

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## **House Bill 2391 (Chapter [290](#))**

Budget reconciliation; general revenues

HB 2391 makes various changes related to state revenues necessary to implement the FY 2008-09 state budget.

Provisions:

- Establishes a minimum annual distribution of Urban Revenue Sharing funds to incorporated cities and towns to at least equal the amount a city or town with a population of 1,500 or more receives.
- Increases, for tax year (TY) 2010, both the corporate and individual income research tax credits from 20 percent to 22 percent of qualified expenses up to \$2.5 million.
- Increases, for TY 2010, both the corporate and individual income research tax credits from \$500,000 plus 11 percent, to \$550,000, plus 13 percent of the excess of \$2.5 million.
- Increases, beginning TY 2011, the corporate and individual income tax credits to 24 percent of qualified expenses up to \$2.5 million.

- Increases, beginning TY 2011, the corporate and individual income tax credits to \$750,000, plus 15 percent of the excess of \$2.5 million.
- Repeals the changes to the research and development tax credits beginning on January 1, 2018, and restores current credit evaluation methodology.

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## Senate Bill 1450 (Chapter [297](#))

Regional attraction districts

SB 1450 allows for the creation of a Regional Attraction District (RAD) which is a “tax levying public improvement district” that “is regarded as performing a governmental function.” The purpose of the RAD will be to establish and operate a permanent amusement park (Regional Attraction Venue or RAV). The RAD may issue tax exempt bonds. To pay off the bonds, the RAD is authorized to levy a 10% excise tax in addition to the existing state TPT. The tax expires when the bonds have been paid.

The bill provides a property tax exemption for RAV property. However, the language allows, in lieu of property tax, voluntary payments to taxing jurisdictions on the valuation of the property in the theme park area and requires in lieu payment to taxing jurisdictions on the valuation of property located outside the theme park area.

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## Miscellaneous

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### House Bill 2317 (Chapter [38](#))

Luxury tax; tobacco tax stamps

HB2317 Codifies provisions of *Arizona Luxury Tax Procedure* LTP 07-1 regarding the Department’s presumptions used during compliance inspections of cigarette distributors’ and retailers’ inventories of stamped cigarette packages.

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### House Bill 2483 (Chapter [159](#))

Ignition strength of cigarettes; regulation

HB2483 establishes a new standard for cigarette ignition propensity, with associated testing and

manufacturer certification requirements, civil penalties for violations, and designates the State Fire Marshal to approve and oversee the program.

This bill is effective on August 1, 2009.

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## House Bill 2638 (Chapter [151](#))

Municipal tax incentive penalty; application

HB2638 extends the prohibition for offering or providing municipal tax incentives to retailers “as an inducement or in exchange for locating or relocating” to a particular city or town to any city or town that has at least sixty-five per cent of its geographical area within a “metropolitan statistical area” (MSA) with a population of two million. There is one city in the Phoenix area that is not completely within the Phoenix MSA. The combination of the prior statutory language and geography gave that city an exemption from the requirements and a competitive advantage over other Valley cities.

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## House Bill 2692 (Chapter [221](#))

Taxpayer information ruling

H.B. 2692 allows DOR to issue a new form of specific taxpayer guidance called *taxpayer information rulings* (TIRs), which, like private taxpayers rulings (PTRs) currently issued, provide specific tax determinations based on the specific fact situations of requesting taxpayers. Unlike PTRs, taxpayers can request TIRs anonymously, but must still reveal their identities to DOR after issuance if they wish for the rulings to be binding for purposes of abating tax, interest, and penalties. Additionally, H.B. 2692 allows taxpayers to submit written requests that the Director of DOR consider withholding publication of their PTRs or TIRs based on their unique facts and circumstances. Based on the Director's nonappealable determination on whether to publish a ruling, the taxpayer may withdraw its ruling request.

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## House Bill 2745 (Chapter [152](#))

### Employer sanctions

HB 2745 makes several amendments to the Employer Sanctions bill that was enacted in 2007.

#### Provisions:

- Provides a defense to the identity theft provisions for persons under the age of 21.
  - Addresses the sale of identity information.
  - Amends the definitions related to the Legal Arizona Workers Act.
  - Clarifies the provisions relating to knowingly employing an unauthorized alien.
  - Provides a separate statute to address the intentional employment of unauthorized aliens and the consequences of the intentional actions of the employer.
  - Adds the requirement that before a government entity awards an economic development incentive, the employer must be registered with the E-Verify program and that if it is determined that the employer has not complied with this requirement that the employer shall be required to repay all monies received as an economic development incentive. The determination can be appealed. Tax incentives are excluded from this provision.
  - Provides for a voluntary employer enhance compliance program and addresses independent contractors.
  - Provides requirements for employers paying wages in cash.
  - Amends the Administrative Procedures Act (APA) by addressing licensing eligibility. Under the new provision state agencies and political subdivisions are required to verify authorized presence prior to issuing a license.
- Adds a new chapter to Title 41, chapter 44, Government Procurement. Under the new provision a government entity shall not issue a contract to a contractor or subcontractor who fails to comply with the requirement to register with the E-Verify program.
  - Provides for the non-severability of the act.
  - Provides an emergency clause, therefore, the bill became effective May 1, 2008, immediately upon the Governor's signature.